

## **DETAILED ACTION**

### ***Status of Claims***

1. This action is responsive to amendment filed on June 18, 2009, where Applicant amended claims 1,28,29, and canceled claim 5. Claims 1-4,6-8,28,29 remain pending.

### ***Response to Amendment***

2. In view of the amendments of 6/18/2009, the claim sets of 1-4,6-8 and 28 and 29 appear to have diverged in subject matter which thus requires different analyses and search strategies for each set. A restriction requirement is outlined below.

### ***Election/Restrictions***

3. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I.* Claims 1-4,6-8, drawn to sending subsequent OIDs prior to receiving a response, classified in at least class 709 subclass 250, and class 719 subclass 321.
  - II.* Claims 28, drawn to waiting to send subsequent OIDs until a response is received, classified in at least class 709 subclass 250, and class 719 subclass 321.
4. This application contains claims directed to the above mentioned patentably distinct species. The species are independent or distinct because claims to the different species recite the characteristics of such species which differ from the other species but are still under the same genus. This requires different analyses and search strategies for each species even though there may be some overlap of classification.

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Species **I** is drawn to the species of sending subsequent OIDs prior to receiving a response from kernel mode driver, corresponding to one type of data exchange sequencing. Species **II** is drawn to waiting to send a subsequent OID until a response is received from kernel mode driver, corresponding to another type of data exchange sequencing. The two species contain functionalities that differ from each other. The species are non-obvious variations of each other and are patentably distinct from each other, based on the current record.

Related inventions are distinct if the inventions as claimed are not connected in at least one of design, operation, or effect (e.g., can be made by, or used in, a materially different process) and wherein at least one invention is patentable (novel and non-obvious) over the other (though they may each be unpatentable over the prior art). See MPEP § 802.01(II).

5. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are held as generic.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

6. Claim 29 link(s) inventions **I** and **II**. The restriction requirement between the linked inventions is **subject to** the nonallowance of the linking claim(s), claim 29. Upon the indication of allowability of the linking claim(s), the restriction requirement as to the linked inventions

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**shall** be withdrawn and any claim(s) depending from or otherwise requiring all the limitations of the allowable linking claim(s) will be rejoined and fully examined for patentability in accordance with 37 CFR 1.104 **Claims that require all the limitations of an allowable linking claim** will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312.

Applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, the allowable linking claim, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

7. **Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species to be examined** even though the requirement may be traversed (37 CFR 1.143) **and (ii) identification of the claims encompassing the elected species**, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election of the species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to

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petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS ACTION IS SET TO EXPIRE ONE (1) MONTH OR THIRTY DAYS FROM THE MAILING OF THIS COMMUNICATION, WHICHEVER IS LONGER. FAILURE TO RESPOND WITHIN THE PERIOD FOR RESPONSE WILL CAUSE THE APPLICATION TO BECOME ABANDONED (35 USC § 133). EXTENSION OF TIME MAY BE OBTAINED UNDER PROVISION OF 37 CFR 1.136(A).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramy M. Osman whose telephone number is (571) 272-4008. The examiner can normally be reached on M-F 9-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ramy M Osman/  
Primary Examiner, Art Unit 2457

October 9, 2009